

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL BERGER,

Plaintiff,

V.

STATE OF WASHINGTON;
MAGGIE MILLER-STOUT,
Superintendent of Airway Heights
Correctional Center; RICHARD
MORGAN; Superintendent of
Washington State Penitentiary in
Walla Walla; RONALD FLECK,
M.D.; JOHN DOE KENNEDY,
M.D.; DEBORAH CLINTON;
JOHN FLETCHER, Physician
Assistant; VERA SALTETH,
Physician Assistant; JOHN DOE
FITZPATRICK, Physician
Assistant.

Defendants.

NO. CV-04-5075-RHW

ORDER ADOPTING, IN PART, AND AMENDING, IN PART, THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Magistrate Judge Cynthia Imbrogno filed a Report and Recommendation on October 25, 2005, recommending that Defendant's Motion for Summary Judgment be granted and Defendant's claims be dismissed with prejudice. Plaintiff timely objected to the Report and Recommendation in so far as it dismisses his state claims with prejudice. Instead, Plaintiff asks that his state claims be dismissed without prejudice to allow him to pursue these claims in state court.

Pursuant to 28 U.S.C. § 1367(c), the Court may decline to exercise supplemental jurisdiction over supplemental state claims if the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1996); *Acri v.*

**ORDER ADOPTING, IN PART, AND AMENDING, IN PART, THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ~ 1**

1 *Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997).

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. The Court **adopts** the Report and Recommendation that dismisses
4 Plaintiff's federal claims with prejudice, and **amends** the Report and
5 Recommendation to dismiss Plaintiff's state claims without prejudice.

6 2. The District Court Executive is **directed** to close this file.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
8 Order, close this file, and forward copies to counsel and Magistrate Judge
9 Imbrogno.

10 **DATED** this 13th day of January, 2006.

11
12 s/Robert H. Whaley
13 ROBERT H. WHALEY
14 Chief United States District Judge
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**ORDER ADOPTING, IN PART, AND AMENDING, IN PART, THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ~ 2**